

REMARKS/ARGUMENTS

This submission accompanies an RCE and serves as a response to the Final Office Action issued August 28, 2006 in connection with the instant application.

As an aside, the Applicant notes that the Examiner has made this Office Action Final alleging that all claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next office action if they had been entered in the application prior to entry under 37 CFR 1.114. The Applicant respectfully disagrees with the Examiner's reasoning.

In the Preliminary Amendment dated June 7, 2006 submitted with the Request for Continued Examination also dated June 7, 2006, the Applicant amended claims 1 and 13 to include the elements of a first and second filter. It was argued by the Applicant that Kurashige does not disclose, teach, or suggest the use of a first filter in a normal light image mode and the use of a second filter in a fluorescence image mode. The Examiner has argued that the "first filter" and "second filter" were inserted in the claims within a functionally non-descriptive phrase, however, it is clear that the first and second filters are structural elements which are not disclosed in the prior art. Therefore, the Examiner could not have rejected the claims on the grounds and the prior art of record had they been entered in the application prior to the entry under 37 CFR 1.114. Nonetheless, the applicant has now refiled the application and requests examination and allowance based on the revised claims.

The Examiner objected to the specification because the first paragraph needs to be updated with respect to the continuation data. The Applicant has amended the Cross Reference to Related Application section to include the patent number of the related application.

The specification was also objected to for failing to provide proper antecedent basis for the claimed subject matter "signal generator", which has now been responded to.

Claims 1-24 were rejected under 35 U.S.C. §102(e) as being anticipated by Kurashige, US 2002/0063788, but as noted above, reconsideration of the rejection is respectfully requested in view of the amendments to the claims herein.

In view of the foregoing amendments and remarks, allowance of claims 1-24 is respectfully requested. Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

Respectfully submitted,

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THROUGH THE UNITED STATES
PATENT AND TRADEMARK OFFICE
EFS FILING SYSTEM
ON NOVEMBER 24, 2006


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